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VIA ELECTRONIC MAIL AND FIRST CLASS MAIL

Attorney Robert Sydney
General Counsel
Massachusetts Division of Energy Resources
100 Cambridge Street, Suite 1020
Boston, MA 02114

RE: Comments on Proposed Changes to Massachusetts RPS Regulations

Dear Mr. Bernstein:

The following are the comments of Rath, Young and Pignatelli, P.A. regarding the proposed amended Massachusetts RPS regulations and guidelines circulated by the Division of Energy Resources (DOER) on June 2, 2006. In offering these comments, we do not speak for our clients or take a position on behalf of any party other than our firm.

1. In general, DOER should minimize changes to its RPS regulations. The success of the program depends on investor confidence, and investor confidence depends on stable program rules. Frequent or substantial rule changes tend to undermine investor confidence.
2. To that end, DOER made clear in the July 1, 2005 Notice of Inquiry that any new regulations or guidelines resulting from the NOI process would not affect Statements of Qualification (SQs) that had already been issued. In addition, DOER reserved the right to issue SQs to four projects with SQ applications pending at the time of the NOI, and later issued SQs to two of these four projects. We read the proposed regulations and guidelines not to affect already-issued SQs, but encourage DOER to reiterate this important point.
3. DOER should not overreact to the Connecticut REC price situation. A REC market is a market, albeit a government-created one. Supply and demand will move, and price will respond to market pressures. To be sure, REC markets are different than other markets because the government mandates a particular level of REC demand. If there is no flexibility in demand, as was the case in the Connecticut REC market, prices will collapse if supply exceeds demand. The Massachusetts REC market is better protected against REC price collapses than the Connecticut market since DOER's regulations include

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meaningful REC banking provisions. If supply of Massachusetts RECs exceeds demand in a given year, suppliers will still value the excess RECs for compliance in future years, so the price is less likely to collapse.

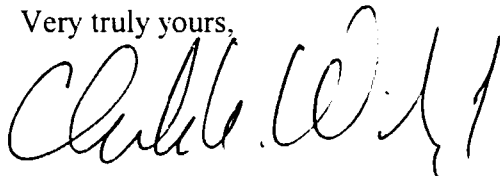
4. DOER has tools in its toolbox to address persistent mismatches in REC supply and demand. If there is a chronic oversupply of RECs, DOER can let the percentage renewable requirement applicable to retail electric suppliers increase by 1% each year. The alternative compliance payment already serves to protect retail suppliers against chronic undersupply of RECs by effectively capping REC prices. In addition, DOER can suspend the percentage increases if necessary to suppress demand.

5. We agree with DOER's proposal to explicitly include C&D wood within the definition of "Eligible Biomass Fuel". As DOER recognized in the NOI, C&D wood must be disposed of somehow, and many biomass plants burn C&D wood together with other wood. In order to participate in the RPS program, biomass plants burning C&D wood must meet not only state air permit requirements but also increasingly strict SQ emissions limits and Massachusetts AALs and TELs (even if the plant is located outside of Massachusetts). In any event, we should leave the decision about how best to dispose of C&D wood to environmental policymakers. At present, policymakers have apparently decided that burning C&D wood is the best disposal alternative.

6. DOER has the power and authority to issue guidelines that interpret and implement its own regulations. Guidelines give DOER the flexibility to change approaches on smaller issues of program implementation without going through a formal rulemaking process. Many federal and state administrative agencies routinely issue guidelines because requiring a rulemaking for every change of interpretation or implementation is impractical. Without guidelines, all program changes must be made either in a formal rulemaking or in case-by-case agency decisions without warning to affected parties. To date, DOER has issued guidelines only after ample opportunity for public comment.

We appreciate the opportunity to provide our input on the proposed regulations and guidelines. We commend DOER for playing a critical role in the development and continuance of renewable energy projects in New England. Please feel free to contact me if you have any questions about the above.

Very truly yours,

A handwritten signature in black ink, appearing to read "Charles G. Willing, Jr.", written in a cursive style.

Charles G. Willing, Jr.